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A Comparison of Students' and Jury Panelists' Decision-making in Split Recovery Cases

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ABSTRACT

This study was designed to assess jury decision-making for 289 participants reading a medical malpractice vignette as a function of participant type (undergraduate students or jury panelists), punitive damage award apportionment (none, half, or all to the plaintiff), and compensation previously assigned to the plaintiff (low, medium, or high). We found several sample differences. Overall, jury panelists awarded more money for punitive damages. Jury panelists were also more affected by compensatory-relevant information when making punitive decisions, including assigning punitive damages and rating the fairness of the traditional apportionment scheme, where the plaintiff receives all of the money. Compared with students, more jury panelists were in favor of the plaintiff receiving the entire punitive award. Most students endorsed split recovery. The authors suggest that psycholegal research conducted solely with student samples, rather than community members, may misestimate the likely behavior of actual juries. The implications of the study for split recovery policy are also discussed.

INTRODUCTION

In recent years, several scholars have acknowledged that the majority of legal psychological research has relied on undergraduate student samples (e.g., Bornstein, 1999; Breau & Brook, 2007; Diamond, 1997). These scholars have raised the question of whether mock jury research using undergraduate samples can accurately represent the population we purport to draw conclusions about, i.e., potential jury members. The purpose of this study was to examine participant differences (undergraduate students vs. members of a community jury panel) in a civil context – evaluation of plaintiff split recovery schemes.

Large jury awards in medical malpractice suits have increased the cost of medical malpractice insurance and medical treatment and have driven many physicians away from practicing in high-risk areas of medicine (Viscusi & Born, 1995). Concerns about these high damage awards in civil cases, especially malpractice cases, have been the primary motivator for the recent ‘‘tort reform’’ movement. Nearly every state in the U.S. has passed some legislation to this effect (Greene, Coon, & Bornstein, 2001; Robbennolt & Studebaker, 1999). Two of these reforms are split recovery systems, which typically apportion less than the full amount of the punitive damage award to the plaintiff, and place caps on punitive damages, which reduce large awards to a statutorily defined amount. While caps have been the subject of several empirical studies (Greene et al., 2001; Robbennolt & Studebaker, 1999; Saks, Hollinger, Wissler, Evans, & Hart, 1997), fewer researchers have explored the impact of split recovery systems on mock jurors' judgments.

The Sampling Debate

The primary purpose of the present study was to systematically test whether undergraduate student and community jury panelists reasoned differently about damages in tort suits. Scholars have been voicing concerns about the ecological validity of legal psychological research for at least 30 years (Bornstein, 1999; Bray & Kerr, 1979, 1982; Breau & Brook, 2007; Diamond, 1997; Studebaker et al., 2002). With regard to jury research, perhaps the primary concern is that the majority of studies have been conducted using undergraduate student samples. At the very least, undergraduate students represent only a narrow segment of the community at large and sampling primarily from students runs the risk of reducing the variability in results. In addition, students are younger and typically have less experience managing money and appreciating its value. As a result, the actual value of students' damage awards may be skewed. Finally, even if it is true that results obtained using student samples do accurately translate to the general population, courtrooms are known to be less friendly toward research that appears to lack external validity (Bornstein, 1999; Lockhart v. McCree, 1986).

While evidence of concern about student samples is apparent, empirical support for that concern is less so. Bornstein (1999) conducted a review of the research and found little evidence that studies with undergraduate mock jurors led to different results than studies with real jurors. However, in a recent study, McCabe & Krauss (2011) found important differences between the two samples. First, the authors gave a measure of rational processing to undergraduate students and community members and found that undergraduate students scored higher. Second, they asked both groups of

participants to act as mock jurors in a videotaped trial. The authors found that, consistent with a rational processing hypothesis, undergraduate students were less persuaded by clinical expert testimony than were the community members. Finally, the authors found that community members were more punitive than undergraduate students. The finding that students demonstrated higher levels of rational processing is not surprising given the daily demands of academia. In this study, we compared responses from a sample of undergraduate students tested in a classroom setting with those from a sample of community members, most of whom were jury panel members tested in the courthouse.

Split Recovery Systems

One of the most recent (and controversial) attempts to decrease the size of punitive damage awards has been through the use of ‘‘split recovery systems’’ in which only a portion of the punitive damage award is given to the plaintiff. The use of split recovery systems is based upon a perceived need to reduce or eliminate the possibility of ‘‘windfall profit,’’ or receipt of an undeserved large sum of money, to the plaintiff (Anderson and MacCoun, 1999Anderson & MacCoun, 1999). The intent of punitive damages is one of punishment and deterrence for the offending party. When punitive damages are awarded to the plaintiff, it appears that the plaintiff unfairly profits, because he or she is receiving an amount far beyond what was required to compensate for losses. This problem is especially apparent when a large corporation is found liable. It might take a substantial amount of money to punish and deter a large corporation, which would yield an enormous windfall to the plaintiff. When all or a portion of punitive damages are redirected to a state fund or non-profit organization, the appearance of a windfall is reduced and the actual intent of the award is preserved.

It should be noted, however, that split recovery schemes are controversial. For example, Schwartz, Behrens, and Silverman (2003) expressed concern that such schemes may actually fuel runaway awards because juries may feel freer to punish the defendant, since the plaintiff would no longer be gaining a windfall. Moreover, depending on how funds are allocated, the state may inadvertently encourage increased punitive settlements through its reliance on those funds and jurors may augment awards to promote social good. Split recovery schemes have also been challenged on constitutional grounds (e.g., Eighth Amendment Excessive Fines Clause, the Fifth Amendment Takings Clause, and the Fourteenth Amendment Equal Protection and Due Process Clauses), both inside and outside the courtroom (see Schwartz et al., 2003).

At present, at least nine states have adopted some version of a split recovery system. Four other states had adopted such systems and subsequently revoked them(Bornstein, Robicheaux, & Thimsen, 2009). Split recovery systems vary in two major ways. First, they vary in the proportion of punitive damages that is reserved for the plaintiff. Most states apportion between 50 and 75% of the punitive damage award to the state, although at least one state (Illinois) leaves the decision up to the trial judge (Garrity, 2006). Second, states vary in how they appropriate the portion retained by the state. Some state statutes specify that the money be deposited into the state’s general fund (Georgia, Alaska, and Utah), while others specify particular funds, such as the Public Benefit Trust Fund (California), State Department of Human Services (Illinois), The Violent Crimes Compensation Fund (Oregon and Indiana), The Civil Reparations

Fund (Iowa), and the Tort Plaintiff Compensation Fund (Missouri) (Sunstein, Kahneman, & Schkade, 1998). Of particular interest to us was the appropriation of punitive damages to funds that serve a ''curative'' function, so named because they attempt to remediate the source of the defendant's egregious behavior and/or provide redress to the plaintiff. Therefore, in the present study, we manipulated the first difference (plaintiff apportionment) while keeping the second difference (appropriation) constant. Specifically, we examined perceptions of plaintiff apportionment in the context of a curative appropriation.

While research on punitive damages is plentiful, few studies have specifically examined jury decision-making under split recovery schemes. Anderson and MacCoun (1999) asked student jurors to evaluate a products liability lawsuit. They assigned either all or none of the punitive award to the plaintiff and tested whether the frequency and amount of punitive damage awards were lower when the state was to receive the award, which is one of the justifications of states employing these systems. The authors found that mock jurors were more likely to award punitive damages when it was being awarded to the plaintiff, but were likely to award higher amounts of punitive damages when the award was going entirely to the state. The authors proposed that the mixed results, particularly the increased likelihood of a punitive damages award in the plaintiff-receipt condition, resulted because participants felt that the plaintiff deserved additional compensation, as a restorative function.

In Anderson and MacCoun (1999), the punitive damages went entirely to the plaintiff or entirely to the neutral third party, which is hardly a test of split recovery systems. In fact, at present, no state garners 100% of the award (Garrity, 2006). One purpose of the present study was to replicate the pattern of results – increased total awards when the plaintiff is statutorily limited to a smaller proportion of that amount – with a more varied manipulation. That is, in addition to a plaintiff-all and plaintiff-none condition, we added a third condition in which participants were told that the punitive damage award would be evenly split between the plaintiff and a charity related to the problem in the case (i.e., medical malpractice).

Jurors' Abilities to Compartmentalize Decisions on Damages

Compared with split recovery systems, a much more common area of psychological research has been aimed at investigating jurors' abilities to compartmentalize decisions on compensatory and punitive damages. According to the law, the purpose of compensatory damages is to repay the plaintiff for losses suffered or which are going to be suffered, whereas punitive damages are in place to punish the defendant for egregious conduct (Schwartz et al., 2003). Given the two purposes, distinctly different information is necessary to make the two damages decisions. For example, information related to the plaintiff's medical expenses and pain and suffering is relevant to compensatory damages, but not to punitive damages. Similarly, information related to the defendant's conduct is relevant to punitive, but not compensatory, damages.

While the law requires compartmentalization, empirical research has demonstrated that jurors have great difficulty with this task. ''Bleeding,'' or leakage of decision-making information between compartments, has been inferred from at least two patterns of results. First, in the split recovery context, researchers have found that when mock jurors are given a predetermined compensatory award, their punitive damage

decisions are unduly influenced by that amount, such that lower compensatory damages leads to an inflation in punitive awards (Anderson & MacCoun, 1999; Morgan, 2004). In these studies, mock jurors appear to be ‘‘correcting’’ for what they perceive to be a low compensatory award by inflating the punitive award. Second, researchers examining caps on punitive damages have suggested that mock jurors inflate compensatory awards when they are forced to limit punitive awards (Saks et al., 1997). Taken together, these studies suggest that bleeding can occur in two directions: inappropriately using compensatory information to make a punitive decision and inappropriately using punitive information to make a compensatory decision. In this study, we examined whether the likelihood of bleeding was influenced by plaintiff apportionment.

The Present Study

The present study was designed with several goals in mind. First, we sought to examine whether sample matters; that is, whether community jury panelists evaluated civil cases differently than undergraduate student panelists. Consistent with McCabe & Krauss (2011), we hypothesized that community members would provide larger punitive awards than students. We also expected that community members would show a greater lack of compartmentalization (i.e., more bleeding) between decisions on damages. This hypothesis was based on the idea that compartmentalization requires strictly following the law, which would be a more rational process. Second, we sought to examine whether plaintiff apportionment would affect punitive awards and other case-related judgments. Consistent with Anderson and MacCoun (1999), we predicted that punitive damages awards would vary as a direct function of the split recovery manipulation, with awards being lowest when the state was to receive the entire award and highest when the plaintiff was to receive the entire award.

In order to accomplish these objectives, we conducted a 3 (level of compensatory award: high, medium, low) x 3 (level of plaintiff apportionment of damages: none, half, all) x 2 (participant type: student, community members) study in which we asked participants to evaluate a medical malpractice case in which compensatory awards had already been decided according to local law. Following a fairly typical legal scheme, as well as prior research (Greene et al., 2001; Saks et al., 1997), we instructed participants that the punitive damage award was capped at $250,000 or an amount no greater than three times the compensatory damage award. This instruction was the same for all conditions. For the two conditions in which the plaintiff was awarded either none or half of the money, participants were instructed that the remainder would go to a charity related to the problem described in the vignette. After reading the vignette, participants were asked to answer a series of questions, including a recommended punitive damages award, an alternative compensatory damages award, measures of fairness, and general preferences for split recovery schemes.

METHOD

Participants

In all, 117 student participants (69% female, n=117) ranging in age from 18 to 44 years (mean age, M=20.22 years, SD=2.45) were recruited from the Psychology Department Subject Recruitment Pool and earned course credit for their participation. The community sample included 172 citizens (57% female, n=87) ranging in age from

18 to 84 years (M=42.09, SD=15.32), most of whom had been recently summoned for jury duty and were waiting in the courthouse waiting room (hereafter called ''jury panelists''). As expected, the student sample was skewed in both age and gender composition, while the jury panelist sample was more representative of the population. Table 1 presents the age, gender, education, and income levels of both samples. It is noteworthy that the reported income levels of students varied considerably. We suspect that many students were reporting their parents' income.

Table 1. Student and community member participant characteristics

Characteristic	Student ($n=141$)	Community member ($n=172$)
Mean (SD) age*	20.17 (2.58) years	42.28 (15.28) years
Gender	66.7% ($n=94$) female	56.5% ($n=87$) female
Education*		
Some HS or HS diploma	0% ($n=0$)	13.9% ($n=22$)
Some college or bachelor's	100% ($n=141$)	68.4% ($n=108$)
Master's or higher	0% ($n=0$)	17.7% ($n=28$)
Income[a]		
$0–30,000	20.6% ($n=29$)	31.1% ($n=46$)
$30–60,000	30.5% ($n=43$)	21.6% ($n=32$)
$60–90,000	21.3% ($n=30$)	13.5% ($n=20$)
$90–120,000	13.5% ($n=19$)	12.2% ($n=18$)
> $120,000	0% ($n=0$)	6.1% ($n=9$)
Retired	14.2% ($n=20$)	15.5% ($n=23$)

HS, high school. Sample comparisons were made using ANOVA (age) and chi-square (gender and education) analyses. Age: $F(1, 296)=287.63$. Education: $\chi^2(2)=53.58$.
[a]The authors suspect that students reported their parents' income rather than their own. Because these data are likely not an accurate reflection of the sample, we did not run group comparisons. *$p<0.05$.

Design and Procedure

We used a 3 (compensatory damages: low, medium, high) x 3 (apportionment to plaintiff: none, half, all) x 2 (participant type: student, jury panelist) factorial design to examine participant opinions relative to settlement of a medical malpractice case.

Participants completed the study in groups. Student sessions comprised one to 50 participants; community sessions comprised 30 to 48 participants. For jury panelists, after the potential jury was sworn in, consent forms were distributed and the packets were randomly distributed to those who elected to participate. For both participant types, consent forms were gathered separately from the research packets. The latter contained no identifying information. All participants were told that the survey contained a brief description of a medical malpractice lawsuit followed by a series of questions for which they were to offer personal opinions. They were informed that the packet contained a summary of the law(compensatory and punitive damages) panelists were asked to follow as they determined the fairness of the previously settled compensation for injuries to the plaintiff and to determine appropriate financial punishment for the defendant.

Materials

The materials package contained three segments: the legal definitions, the case vignette, and the jury instructions.

Legal Definitions

The first segment provided the legal definition of compensatory and punitive damages in medical malpractice suits as follows:

In suits such as this one, three financial awards are typically made. Two amounts (a and b below) are awarded to the person (group) harmed to cover expenses and pain and suffering. The third (c below) is punitive and is intended to punish the offender:

a) compensation for fairly objective economic damages such as medical expenses, lost earnings, and other expenses;

b) compensation for more difficult to quantify non-economic losses such as pain and suffering, emotional distress, disability, and loss of enjoyment of life;

c) punitive damages are awarded in order to punish the defendant and keep them from again engaging in malicious, evil, willful, and egregious behavior.

The legal definitions also included a statement indicating that the North Carolina law imposes a punitive damages ceiling of $250,000 or an amount no greater than three times the total amount awarded for compensation, which includes both economic and non-economic damages, whichever amount is higher (Limitation on Amount of Recovery, 2009).

Case Vignette

The vignette described the case of Phyllis N., a 38-year-old office manager, who filed a lawsuit for compensation for lost wages and other expenses incurred following thyroid surgery. A tumor was found on the left lobe of her thyroid gland and that lobe was scheduled for removal. However, due to negligence on the part on the medical clinic, the right lobe was removed by mistake. Phyllis had to have additional surgery to remove the tumor, leaving no thyroid gland intact. The vignette included only modest detail in order to measure juror bleeding, as participants listed what information they used and would like to have had in order to assess the punitive award.

Jury Instructions

The two experimental manipulations were embedded in the instructions following the vignette. For the compensatory damages manipulation, participants were told that a previous jury found the defendant guilty and that the plaintiff had been awarded compensation for economic and non-economic damages (i.e., ‘‘compensatory damages’’) in one of the three manipulated amounts ($50,000, $83,000, or $117,000). The amounts were chosen so that trebling them could yield maximum punitive

damages approximately $100,000 below, at, or $100,000 above the $250,000 cap. The narrative then applied the statutory scheme to the compensatory damages amount, explicitly telling participants that the plaintiff could not be awarded punitive damages above $250,000 for the first two conditions or above $351,000 for the third. For the split recovery manipulation, participants were informed that the plaintiff would receive all, none, or half of the damages. In the latter two conditions, participants were also informed that the remainder would go to a charity ''related'' to medical malpractice issues.

Measures

Damage Awards

Participants were asked to make two award judgments: an alternative compensatory damages award and a punitive damages award. For the alternative compensatory damages award, the measure stated: ''If you feel that [the amount] for compensatory damages and pain and suffering was not fair, how much money do you think the person should have received?'' The punitive damages award measure stated: ''How much money would you give for punitive damages (no more than [limit for that vignette])?''

''Bleeding'' Measures

We reasoned that we would see evidence of ''bleeding,'' or lack of compartmentalization, if there was a main effect for the compensatory manipulation on punitive damage awards or a main effect for the split recovery manipulation on the alternative compensatory award. Beyond these analyses, we wanted to test more explicitly whether participants were inappropriately considering compensatory-relevant information in their punitive damages decision. To do so, we asked participants two open-ended questions: ''What information did you use to decide punitive damages?'' and ''What additional information would you have liked to have available when deciding punitive damages?'' Responses to these questions were coded into two mutually exclusive categories: (1) participant used/wanted at least some compensatory-relevant information (e.g., ''actual cost to plaintiff''; ''cost of medical problems and drugs''); (2) participant used/wanted only punitive-relevant information (e.g., ''what caused the error''; ''doctor's intent''). The responses were categorized by two of the authors separately and then compared for agreement. Discrepancies were discussed and resolved.

Other Case-related Judgments

Participants were asked to make two fairness judgments. First, they indicated whether they thought the amount of compensatory damages was fair. Second, they indicated whether they thought it would be fair for the plaintiff to receive all of the punitive damages. Fairness was measured on a five-point scale from 1 (= ''very unfair'') to 5 (= ''very fair''). This was intended as a measure of general attitudes about the traditional rule of law.

Participants were also asked to indicate their apportionment preferences. They identified what proportion of the punitive award they thought the plaintiff should get from the following options: 0, 25, 50, 75, or 100% of the award. They were also asked, ‘‘If you feel the injured party should not receive all of the punitive award, where do you think the remaining amount should go?’’ They were given the following options: a charity organization related to the problem in order to correct it, the state government, or other (please describe other possibilities).

Demographics

We asked participants to report their age, gender, level of education (some high school, some college, bachelor’s degree, master’s degree, doctoral degree), and income level (retired, $0–30,000, $30,000–60,000, $60,000–90,000, $90,000–120,000,>$120,000). These results were reported in the ‘‘participants’’ section above and in Table 1.

RESULTS

We have organized the results around two questions: does plaintiff apportionment affect damage awards; and does it affect other case-related judgments? Remembering that our primary goal was to evaluate sample differences, we opted to incorporate participant comparisons through the results. In other words, we explored sample differences in the context of each of our research questions, rather than separately at the end.

Does Plaintiff Apportionment Affect Damage Awards?

Compensatory Damages

We gave participants the option of recommending an alternative compensatory damages award if they were unsatisfied with the one previously decided. To test whether this alternative award was affected by the plaintiff apportionment scheme, we ran a 3 (plaintiff apportionment) x 3 (compensatory damages) x 2 (participant type) analysis of variance (ANOVA), comparing mean alternative compensatory awards among the groups (Table 2). There was a main effect for the compensatory damages manipulation, $F(2, 294)=19.84$, $p<0.001$, $n^2_p=0.12$, with participants in the low and medium conditions recommending significantly less than those in the high compensatory award condition. There were no main effects or interactions for plaintiff apportionment ratio or participant type.

We suspected that the main effect for the compensatory manipulation was potentially due to an anchoring effect; participants may have been using the award provided as an anchor for their own alternative award decisions. Given this possibility, we thought a better test of the impact of split recovery was to test for differences in the direction of the change from the anchor. We coded participants into three categories: recommending a lower award (n=4, 1.3%), recommending the same award/not recommending an alternative (n=78, 25.0%), and recommending a higher award (n=230, 73.7%). Given how few participants fell into the ‘‘lower than’’ category, we

dropped these from the analysis. Then, we conducted a chi-squared test comparing frequency of same-as or higher-than recommendations among the three plaintiff apportionment conditions. There was no significant difference in the frequency distribution, suggesting that the split recovery manipulation did not affect participants' alternative compensatory award recommendation.

Table 2. Average alternative compensatory damage award recommendations

	Mean (SD)
Compensatory award condition**	
Low	$150,096 ($122,401)[a]
Medium	$150,933 ($122,954)[a]
High	$288,447 ($253,945)[b]
Split recovery condition	
None to plaintiff	$214,524 ($238,981)
Half to plaintiff	$179,118 ($154,187)
All to plaintiff	$194,411 ($160,029)
Participant type	
Undergraduate students	$189,900 ($221,022)
Jury panelists	$201,058 ($156,832)

Note: averages were rounded to the dollar. There were no significant interactions between the three conditions. Superscripts (a and b) reflect post-hoc pairwise comparisons; different superscripts represent significant group differences on the mean.
**$p < 0.01$.

Punitive Damages

We conducted another 3x3x2 ANOVA comparing group means on participants' punitive damage awards (Table 3). Contrary to our hypothesis, punitive damage awards were not affected by the split recovery manipulation. However, they were affected by both the compensatory damages manipulation [$F(2, 295)=21.96$, $p<0.001$, $n^2_p=0.13$], and participant type [$F(1, 295)=6.75$, $p=0.01$, $n^2_p=0.02$]. Pairwise comparisons revealed that participants in the low and medium compensatory damages conditions awarded significantly lower punitive damages than participants in the high condition. As predicted, jury panelists awarded more punitive damages (mean, M=$258,113) than college students (M=$226,582) – a difference of more than $30,000.

These two main effects were qualified by a marginally significant interaction, $F(2, 295)=2.97$, $n^2_p=0.02$. We followed up by selecting for each participant condition and running the simple one-way ANOVA comparing mean punitive awards for each compensatory condition (Figure 1). The ANOVA was significant for both students [$F(2, 138)=4.37$, $p<0.01$, $n^2_p=0.06$], and jurors [$F(2, 169)=20.97$, $p<0.001$, $n^2_p=0.20$]. For both groups, the pattern was the same, with statistically equivalent punitive awards in the low and medium compensatory conditions, which were both significantly lower than the punitive award given in the high compensatory condition. However, this effect was substantially larger for jurors. We also followed up by directly comparing students and jury panelists within each of the three compensatory conditions. The only significant difference was in the high compensatory award

condition, where jury panelists awarded significantly more punitive damages than students, F(101),=6.76, p=0.01, n^2_p =0.06.

Table 3. Average alternative punitive damage award recommendations

	Mean (SD)
Compensatory award condition**	
Low	$211,779 ($118,442)[a]
Medium	$213,703 ($59,517)[a]
High	$307,437 ($154,160)[b]
Split recovery condition	
None to plaintiff	$246,282 ($82,474)
Half to plaintiff	$254,417 ($177,044)
All to plaintiff	$231,722 ($95,370)
Participant type*	
Undergraduate students	$226,582 ($113,392)
Jury panelists	$258,113 ($132,090)

Note: averages were rounded to the dollar. There were no significant interactions between the three conditions. For the compensatory award manipulation, superscripts (a and b) reflect post-hoc pairwise comparisons; different superscripts represent significant group differences on the mean.
*$p < 0.05$. **$p < 0.01$.

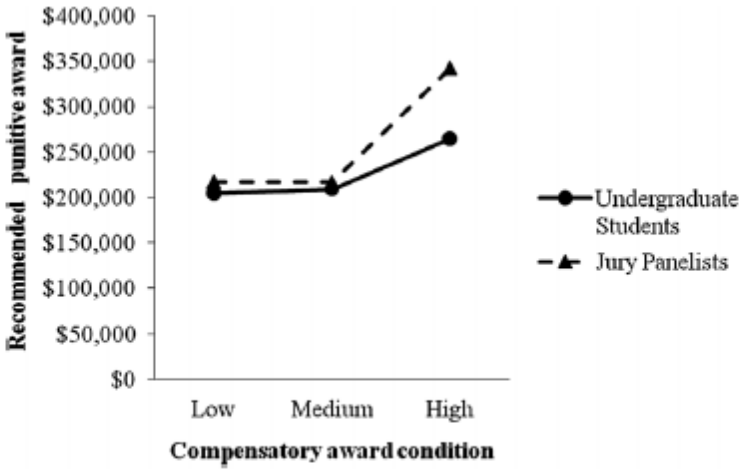

Figure 1. Interaction of participant type and compensatory award condition on recommended punitive damage awards.

Evidence of Bleeding

As mentioned in the introduction, we believed that evidence of bleeding would be present if the compensatory manipulation affected the punitive damages decision or the split recovery manipulation affected the alternative compensatory damages decision. In addition to that test, we also measured bleeding more explicitly by asking participants what information they used and what information they wished was available in making

their punitive damages decision, and coded responses as either inappropriately citing some compensatory-relevant information or appropriately citing only punitive-relevant information. In response to the question ‘‘What information did you use?’’ only 72.5% (n=227) of our sample provided responses that fitted into either of these categories. The remainder either did not answer the question or provided a response that did not fit into either of the categories. Similarly, 61.3% (n=227) provided a codeable response for ‘‘What information did you want?’’

Overall, 52.4% (n=119) of those who responded used compensatory information for their punitive damages decision. Similarly, 54.7% (n=105) wanted compensatory information. To explore whether split recovery affected use of appropriate information in making the punitive damages decision, we conducted a series of binary logistic regressions, entering the compensatory and split recovery manipulations as independent variables. Because we expected that students might be more likely to compartmentalize, we ran the logistic regressions separately for students and jury panelists. The model predicting used information was not significant for either sample. For students, the model predicting wanted information was not significant; however, this model was significant for jury panelists [x^2 (4)=13.26, p=0.01, Nagelkerke R^2=0.18]. The split recovery manipulation was the only significant predictor (p=0.004). Specifically, compared with those in the all-to-plaintiff condition, jury panelists in the half-to-plaintiff condition were less likely to want compensatory-relevant information in making their punitive damages decision [B=1.49, p=0.006, Exp(B)=4.45].

Does Plaintiff Apportionment Affect other Case-related Judgments?

Perceived Fairness

To explore whether split recovery affected participants’ reactions we conducted ANOVAs comparing mean differences on two fairness ratings: fairness of the stated compensatory award and fairness of the plaintiff receiving all of the punitive damages award (i.e., fairness of an all-to-plaintiff statutory scheme). According to the law, split recovery of punitive damages should have no impact on people’s perceptions of compensatory awards. We found no significant differences.

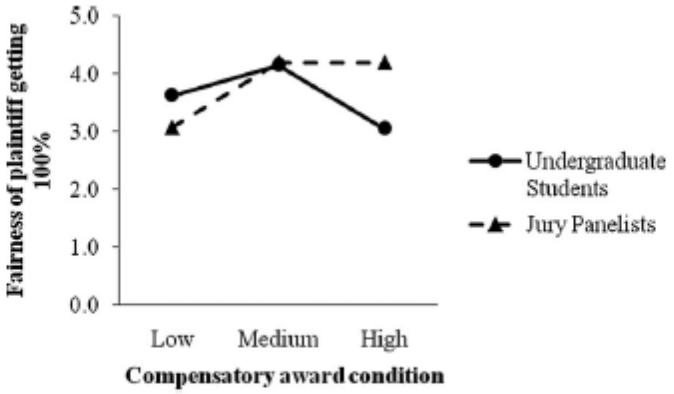

Figure 2. Interaction of participant type and compensatory award condition on perceived fairness of plaintiff receiving the entire punitive damages award. Fairness was measured on a 5-point scale, with higher scores indicated higher fairness.

Fairness of the plaintiff receiving all of the punitive damage award revealed itself as a much more complicated picture. There were two significant main effects and two interactions. The two main effects were for the compensatory damages manipulation [F(2, 295)=15.43, p<0.001, h2p =0.10] and the split recovery manipulation [F(2, 295)=12.10, p<0.001, h2p =0.08]. Because the main effects were qualified by their interactions, only the interactions will be discussed here. First, there was a significant interaction between the two manipulations [F(4, 295)=6.62, p<0.001, n^2_p =0.08]. To follow up, we selected for each level of compensatory damages and ran one-way ANOVAs testing split recovery group differences on reported fairness. There were no split recovery group differences for the medium and high compensatory damages conditions; however, participants in the low compensatory damages condition reported significantly less fairness if they were also in the none-to-plaintiff (M=2.58, SD=1.48) and half-to-plaintiff (M=2.91, SD=1.34) conditions, as compared with the all-to-plaintiff condition (M=4.39, SD=0.84) [F(2, 101)=21.18, p<0.001, n^2_p =0.30].

The second interaction was between the compensatory damages manipulation and participant type [F(2, 295)=4.92, p=0.01, n^2_p =0.03]. To follow up, we compared perceived fairness between compensatory damages conditions for students and jury panelists separately (Figure 2). The ANOVA for students was only marginally significant [F(2, 138)=3.05, p=0.05]. For jury panelists, those in the low compensatory damages condition reporting significantly lower fairness (M=3.07, SD=1.58) than those in the medium (M=4.20, SD=1.17) and high conditions (M=4.20, SD=1.09) [F(2, 169)=14.47, p<0.001, n^2_p =0.15]. Again, we also followed up with direct participant type comparisons and found significant differences only in the high compensatory award condition: jury panelists (M=4.20, SD=1.12) rated the traditional plaintiff-receipt rule as fairer than students (M=3.72, SD=1.12) [F(1, 101)=4.72, p=0.03, h2p =0.05].

Apportionment Preferences

In addition to examining the impact of split recovery on damage decisions, we also wanted to explore participants' attitudes about what proportion of punitive damage

awards the plaintiff should receive and where the remainder, if any, should go. First, we asked participants to indicate whether they thought plaintiffs should receive 0, 25, 50, 75, or 100% of the punitive award. The majority of participants indicated that they supported the plaintiff receiving the majority of the money, with 45.1% (n=139) endorsing the 100% option. Endorsement for the options declined in order, with the smallest proportion of the sample (n=6, 2%) indicating that the plaintiff should receive nothing.

We found a significant association between participant type and apportionment preference [$x^2(4)=17.26$, $p<0.01$]. In examining the frequency of apportionment preferences for each group, the biggest difference was in preference for the plaintiff receiving 100% of the punitive award. Whereas only 32.8% (n=45) of students expressed this preference, 55.0% (n=94) of jurors did. In contrast, as compared with jurors (17.0%, n=29), a greater proportion of students (30.7%, n=42) indicated a preference for the plaintiff receiving 75% of the punitive award. In fact, the majority of the student sample generally supported split recovery, with 60.6% (n=83) preferring that plaintiffs receive 25, 50, or 75% of the punitive award. This was not the case for the juror sample; only 41.0% (n=70) of the sample preferred split recovery. Overall, the vast majority of the participants who responded (n=186, 89.9%) preferred that the remaining portion of the punitive damage award should go to an organization somehow related to the problem at issue in the trial. Less than 10% combined indicated a preference for the state (n=13, 6.3%) or an unspecified ‘‘other’’ (n=8, 3.9%) to receive the money. Because there was so little variability, we did not test for significant group differences.

DISCUSSION

This study was designed to explore the effects of participant type (undergraduate students vs. actual jury panelists) and apportionment of punitive damage awards (i.e., split recovery) on legal decision-making. Participants read brief malpractice vignettes describing the same injury, but varying in amount of compensatory damages awarded and plaintiff apportionment of the punitive award. In short, we found several differences between students and jury panelists. The general pattern of results supports two potential explanations for these differences. On the one hand, community members may be more plaintiff-friendly than students. On the other hand, given the evidence of bleeding, community members may be less able or willing to compartmentalize their damages decisions.

Summary and Discussion of Major Findings

We found several potentially important differences between students and jury panelists. First, consistent with our hypothesis, jury panelists assigned significantly higher punitive damage awards than students, particularly in the high compensatory award condition. This is also consistent with McCabe & Krauss (2011), who found community members to be more punitive. Second, when participants were told that the plaintiff would receive the entire punitive damages award, jury panelists were more likely to express that they wanted more compensatory-relevant information to make an informed punitive award decision. Third, when the compensatory award was high, jury panelists thought it was especially fair for the plaintiff to receive the entire punitive

award. These two findings are consistent with our hypothesis that community members would be less likely to compartmentalize their compensatory and punitive decisions. Fourth, a greater proportion of jury panelists expressed a preference that plaintiffs should get the entire punitive damages award, rather than sharing it with the state or an outside fund; most students supported split recovery.

Community Members are More Plaintiff-Friendly

These findings provide some support for the notion that community members, compared with undergraduate students, may be more plaintiff-friendly in their decisions in civil cases. When compensatory damages were high, jury panelists gave higher punitive awards and rated it as fairer for the plaintiff to get all of the punitive award than half or none of it. When given the opportunity, jury panelists asked for more compensatory-relevant information to facilitate their punitive damages decision, which suggests that they wanted to compensate plaintiffs more through the punitive award.

We cannot rely on the results of this study to explain why jury panelists appear to be plaintiff-friendly. One possibility is that community members, by nature of their personal characteristics, can relate more to the injury and the plaintiff. Community members are older, which suggests that they likely have more experience managing money and with the negative consequences of personal injury. As a mock juror, community members may bring all of this to their evaluation of a civil case, potentially increasing their identification with the needs of the plaintiff. However, it should be noted that other researchers have failed to find large sample effects due to demographic differences (e.g., Diamond, Saks, & Landsman, 1998).

We hesitate to draw firm conclusions that pro-plaintiff bias fully accounts for the results of this study. If community members are driven by a pro-plaintiff bias, we would expect more consistent differences (i.e., main effects) between jury panelists and undergraduate students, regardless of the compensatory damages condition. If an interaction were to be found, a pro-plaintiff argument might suggest that jury panelists would be even more motivated to compensate the plaintiff or endorse a traditional all-to-plaintiff punitive law when the compensatory damages were low. In contrast, we found interaction effects when compensatory damages were high.

Community Members are Less Likely to Compartmentalize

These findings might also be explained in terms of ‘‘bleeding’’ effects, which was of particular interest in this study. Bleeding effects can be found when compensatory-relevant information influences punitive decisions or when punitive-related information influences compensatory decisions. We found evidence of bleeding, but more strongly for jury panelists than for students. Compensatory-relevant information influenced jury panelists’ punitive decisions in the following ways: (1) high compensatory awards led to higher punitive damages decisions; (2) high compensatory awards led to greater ratings of fairness for the plaintiff to receive all of the punitive award; and (3) jury panelists ‘‘wanted’’ additional compensatory-relevant information to inform their punitive decision. Of these effects, only the first was also present for students and the effect was weaker.

There was also some support for a bleeding effect in the opposite direction: punitive-relevant information influencing compensatory decisions. We found that the amount of the participants' alternative compensatory award recommendations was directly influenced by the original compensatory award provided in the scenario, with those in the lower award condition recommending lower alternative awards than those in the higher conditions. It is possible that the compensation assigned in the vignette was perceived as an index of the egregiousness of the defendant's error, which is defendant- or punitive-related information. If this is so, then participants were failing to compartmentalize. On the other hand, this appears to resemble a basic anchoring effect, which has been demonstrated in similar research (Robbennolt & Studebaker, 1999; Saks et al., 1997).

Why might community members be less likely to appropriately compartmentalize their decisions? An important question is whether community members merely misunderstand or deliberately ignore the legal instructions. There is some evidence that students, compared with community members, have a higher need for cognition (McCabe & Krauss, 2011). It could be that students are better at reading and following the instructions provided in these kind of research paradigms. Students spend countless hours in the classroom and are rewarded for reading closely, following directions, and reasoning abstractly through complex problems. Furthermore, when they participate in research, they usually do so on campus, often in a classroom. Given their academic mindset, it would not be surprising that students would more carefully read and follow the legal instructions than community members.

Another possibility is not that community members are less capable of understanding the directions, but that other biases override their rationality, such as a pro-plaintiff bias. For example, if community members do favor plaintiffs, then this bias may be expressed as resistance to compartmentalizing decisions in favor of providing the plaintiff with a larger overall monetary award. Our data cannot distinguish between these two explanations.

Research Implications

Regardless of why these participant differences emerged, their existence has important implications for legal psychology research. If it is true that students are evaluating civil cases differently, then research that relies primarily on student samples is likely to estimate legal decision-making inaccurately, especially when it comes to punitive damages. For example, student-based research may underestimate punitive award amounts, as well as the extent of bleeding effects. Where policy preferences are important, student-based research may overestimate support for split recovery, and possibly other tort reforms. While we do believe that these sample differences are important, we also acknowledge the difficulty in collecting data from community samples. Therefore, we favor an approach such as that proposed by Diamond (1997) and endorsed by others (e.g., McCabe et. al, 2009), in which hypotheses are first tested with undergraduates and then verified with a more representative community sample.

Legal Implications

Concern relative to high punitive damage awards has been a major motivator for the recent ‘‘tort reform’’ movement. Nearly every state has passed some form of legislation to limit what is seen as windfall profit to plaintiffs awarded extremely high punitive

awards (Green et al., 2001; Robbennolt & Studebaker, 1999). Split recovery schemes represent some of the most recent attempts to reduce punitive awards and apparent windfalls to the plaintiff. Contrary to our hypothesis, there was no main effect for split recovery on punitive damages awards. Nonetheless, our findings do suggest that when jurors, especially community members, are aware of split recovery rules, they evaluate civil cases differently. Specifically, when told that the plaintiff would split the damages with a related charity, jury panelists were less likely to recommend wanting, inappropriately, additional compensatory-related information to make the punitive damages decision. In addition, participants, particularly jury panelists, thought it was fairer for the plaintiff to receive the entire punitive award when compensatory damages were high.

In addition to examining the impact of split recovery on the decisions described above, we also directly asked participants to report their preferences regarding what proportion of the punitive award plaintiffs should receive and who should get the remainder. Almost half of the participants preferred that plaintiffs receive the entire punitive damages award. Only a very small proportion of the sample indicated a preference for the plaintiff to receive none of the award. Further, participants preferred that the proportion of the punitive award not going to the plaintiff should go to a charity with the potential to assist with remediation of the egregious behavior. These findings suggest that people, especially those likely to serve on juries, may not be entirely supportive of split recovery statutes. This dissatisfaction may serve as a foundation, either explicit or implicit, for resistance to compartmentalization.

CONCLUSIONS

Conclusions drawn from this study are attenuated by several factors. First, only one case vignette was used. The vignette was brief compared with the information a jury has at their disposal in a trial. We opted to include minimal detail in order to allow for the participants to indicate what information they used or wished they had had in order to make their punitive damages decision. The setting for the study was a small college town in the south of the U.S.A. The demographic characteristics of the region and the participants may have produced different outcome measures than if the study had been conducted elsewhere. Naturally, individual decisions by mock jurors do not capture the richness of the deliberation that jury, rather than juror, studies capture.

Despite these limitations, this study contributes to two ongoing dialogues. First, it contributes to the ongoing dialogue about the validity of using undergraduate students in mock juror research. We found that jury panelists awarded significantly more money in punitive damages and were more influenced by compensatory-relevant information when making judgments about punitive damages. These findings could be explained by a pro-plaintiff bias on the part of community members. Alternatively, community members may be less able or willing to follow legal instructions. The differences between the two samples underlines the arguments put forward by others (Diamond, 1997; McCabe & Krauss, 2011) that mock jury research using student samples should be replicated with samples that are more representative of actual juries.

Second, this study provides information relevant to the dialogue concerning jurors' ability to compartmentalize decisions on damages, especially in the context of efforts to limit punitive awards. Our study seems to indicate that bleeding is inevitable in jury

decision-making. However, bleeding may be altered in states where bi- or trifurcated juries are used (see Anderson & MacCoun, 1999). The American Bar Association and the American College of Trial Lawyers have endorsed court reform to withhold punitive-related evidence from juries until after their compensatory decision has been made. Even with this practice, jurors are likely to bring general attitudes about civil courts and tort policy with them into the deliberation room.

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